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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIBEL DOMANTAY,
Plaintiff,
v.
NDEX WEST, LLC, et al.,
Defendants.

No. 2:15-cv-0788 MCE KJN PS

ORDER

On April 17, 2015, defendant Wells Fargo Bank, N.A., successor by merger with Wells Fargo Bank Southwest, N.A., f/k/a Wachovia Mortgage, FSB, f/k/a World Savings Bank, FSB, (“Wells Fargo”) filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) on the basis that plaintiff’s complaint fails to state a claim against Wells Fargo upon which relief can be granted.¹ (ECF No. 7.) Wells Fargo noticed its motion for a hearing to take place before the undersigned on May 21, 2015. (Id.) Pursuant to this court’s Local Rules, plaintiff was obligated to file and serve a written opposition or statement of non-opposition to the pending motion at least fourteen (14) days prior to the hearing date, or May 7, 2015. See E.D. Cal. L.R. 230(c).²

¹ This action proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

² More specifically, Eastern District Local Rule 230(c) provides:

(c) Opposition and Non-Opposition. Opposition, if any, to the

1 The court’s docket reveals that plaintiff, who is proceeding without counsel, failed to file a
2 written opposition or statement of non-opposition with respect to the motion to dismiss.

3 Eastern District Local Rule 110 provides that “[f]ailure of counsel or of a party to comply
4 with these Rules or with any order of the Court may be grounds for imposition by the Court of
5 any and all sanctions authorized by statute or Rule or within the inherent power of the Court.”

6 Moreover, Eastern District Local Rule 183(a) provides, in part:

7 Any individual representing himself or herself without an attorney
8 is bound by the Federal Rules of Civil or Criminal Procedure, these
9 Rules, and all other applicable law. All obligations placed on
10 “counsel” by these Rules apply to individuals appearing in propria
11 persona. Failure to comply therewith may be ground for dismissal,
12 judgment by default, or any other sanction appropriate under these
13 Rules.

11 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the
12 same rules of procedure that govern other litigants”) (overruled on other grounds). Case law is in
13 accord that a district court may impose sanctions, including involuntary dismissal of a plaintiff’s
14 case pursuant to Federal Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his
15 or her case or fails to comply with the court’s orders, the Federal Rules of Civil Procedure, or the
16 court’s local rules.³ See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a
17 court “may act sua sponte to dismiss a suit for failure to prosecute”); Hells Canyon Preservation
18 Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss
19 an action pursuant to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff’s failure to
20 prosecute or comply with the rules of civil procedure or the court’s orders); Ghazali v. Moran, 46

21 granting of the motion shall be in writing and shall be filed and
22 served not less than fourteen (14) days preceding the noticed (or
23 continued) hearing date. A responding party who has no opposition
24 to the granting of the motion shall serve and file a statement to that
25 effect, specifically designating the motion in question. No party
will be entitled to be heard in opposition to a motion at oral
arguments if opposition to the motion has not been timely filed by
that party. . . .

26 ³ The Ninth Circuit Court of Appeals had held that under certain circumstances a district court
27 does not abuse its discretion by dismissing a plaintiff’s case pursuant to Federal Rule of Civil
28 Procedure 41(b) for failing to file an opposition to a motion to dismiss. See, e.g., Trice v. Clark
County Sch. Dist., 376 Fed. App’x. 789, 790 (9th Cir. 2010) (unpublished).

1 F.3d 52, 53 (9th Cir. 1995) (per curiam) (“Failure to follow a district court’s local rules is a
2 proper ground for dismissal”); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992)
3 (“Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an action for
4 failure to comply with any order of the court”); Thompson v. Housing Auth. of City of L.A., 782
5 F.2d 829, 831 (9th Cir. 1986) (per curiam) (stating that district courts have inherent power to
6 control their dockets and may impose sanctions including dismissal or default).

7 In light of the foregoing, IT IS HEREBY ORDERED that:

8 1. The hearing on Wells Fargo’s motion to dismiss (ECF No. 7), which is
9 presently set for May 21, 2015, is CONTINUED until June 18, 2015, at 10:00 a.m., in Courtroom
10 No. 25 before the undersigned.


11 2. Plaintiff shall file a written opposition to the motion to dismiss, or a
12 statement of non-opposition thereto, on or before June 4, 2015. Plaintiff’s failure to file a written
13 opposition will be deemed a statement of non-opposition to the pending motion and consent to the
14 granting of the motion, and shall constitute an additional ground for the imposition of appropriate
15 sanctions, including a recommendation that plaintiff’s entire case be involuntarily dismissed with
16 prejudice pursuant to Federal Rule of Civil Procedure 41(b).

17 3. Wells Fargo may file a written reply to plaintiff’s opposition, if any, on or
18 before June 11, 2015.

19 4. The August 27, 2015 status conference in this matter is CONTINUED until
20 September 17, 2015, at 10:00 a.m., in Courtroom No. 25 before the undersigned.

21 IT IS SO ORDERED.

22 Dated: May 11, 2015

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25 KENDALL J. NEWMAN
26 UNITED STATES MAGISTRATE JUDGE
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